IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Crl.Rev.Pet.No. 3961 of 2007()

CRA.50/2000 of ADDL. SESSIONS COURT (ADHOC), TRIVANDRUM
CC.719/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, ATTINGAL
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REVN. PETITIONER: APPELLANT/1ST ACCUSED

SHEJI @ KOCHANUJAN, S/O. SASIDHARAN PILLAI, VELLALLOOR, KOCHUVILA VEEDU, VELLALLOOR VILLAGE.

BY ADV. SRI.J.JAYAKUMAR

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M. NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 3961 of 2007

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Dated: 14-11-2007

ORDER

The revision petitioner who was the first accused in C.C. 719 of 1997 on the file of the J.F.C.M.-II, Attingal (Crime No. 177 of 1997 of Kilimanoor Police Station) for offences punishable under Sections 452 and 326 read with Sec. 34 challenges the conviction entered and the sentence passed concurrently by the courts below for the aforementioned offences.

2. The case of the prosecution can be summarised as follows:

On 15-6-1997 at about 8 a.m. the two accused persons in furtherance of their common intention to voluntarily cause grievous hurt to P.W.1 criminally trespassed into the shop of P.W.1 and A1 cut P.W.1's left forearm with the chopper causing a fracture. A2 who is the brother of A1 assisted A1 in committing the aforesaid offences by making available the chopper.

3. On the side of the prosecution 11 witnesses were examined as P.Ws 1 to 11 and 9 documents were got marked as Exts.P1 to 9 and one chopper was got marked as MO1.

4. Since the 2nd accused died pending trial, the case against him stood abated.

5. On the revision petitioner/first accused denying the incriminating circumstances appearing against him in the evidence for the prosecution during his cross examination under Sec. 313 (1)(b) Cr.P.C., he was called upon to enter on his defence. He did not adduce any defence evidence.

6. The learned J.F.C.M.-II, Attingal, after trial, as per judgment dated 12-1-2000 found the revision petitioner guilty of the offences and sentenced to simple imprisonment for two years and to pay fine of Rs. 1,000/- and on default to pay the fine to suffer simple imprisonment for three three months for each of the offences. Even though the revision petitioner preferred an appeal before the Sessions Court, Thiruvananthapuram as Criminal Appeal 50 of 2000, as per judgment dated 4-8-2007 the learned Addl. District & Sessions Judge (Fast Track Court-I) Thiruvananthapuram, dismissed the appeal confirming the conviction and sentence passed against the revision petitioner. Hence, this revision.

7. Even though the learned counsel appearing for the revision petitioner assailed the conviction entered against the revision petitioner on various grounds , in as much as the conviction has been recorded after a careful evaluation of the oral and documentary evidence in the case, this Court sitting in revision will be loathe to interfere with the said conviction and the said conviction is accordingly confirmed.

8. What now survives for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioner. A perusal of the evidence will show that it was P.W.1 who started the altercation on 15-6-1997, when he saw the two accused persons, who are brothers, in his tea shop at 8 a.m. The occurrence

was the result of the culmination of a wordy altercation. Considering the entire facts and circumstances of the case, I do not think that the revision petitioner deserves penal servitude by way of incarceration. I am of the view that an appropriate direction to undergo imprisonment till rising of court and an appropriate fine will meet the ends of justice. Accordingly, the sentence imposed on the revision petitioner is set aside, but instead, for his conviction under Sections 452 and 326 I.P.C. he is sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs. 5,000/- each. On default to pay the fine he shall suffer simple imprisonment for three months. From out of the fine amount a sum of Rs. 7,500/- shall be paid to P.W.1 the injured as compensation under Sec. 357 (1) Cr.P.C. The fine amount shall be deposited within one month from today.

This Revision is disposed of confirming the conviction entered but modifying the sentence as above.

V. RAMKUMAR,
(JUDGE)

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